



**PATENT APPLICATION**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Migaku SUZUKI et al.

Group Art Unit: 3761

Application No.: 10/587,944

Examiner: A. MARCETICH

Filed: October 17, 2006

Docket No.: 128971

For: ABSORBENT ARTICLE

**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In reply to the March 27, 2008 Election of Species Requirement and in consideration of the attached Petition for Extension of Time, Applicants provisionally elect, Species Fig. 6B, with claims 1, 2, 3, 4, 5 and 6 readable on elected Species Fig. 6B; Species Fig. 11F, with claims 1, 11, 12, 15, 16, 17 and 18 readable on elected Species Fig. 11F; Species Fig. 13C, with claim 1 readable on elected Species Fig. 13C; Species 14B, with claims 1, 8 and 9 readable on elected Species Fig. 14B; Species Fig. 15B, with claims 1, 11, 12, 13, 14, 18, 21 and 22 readable on elected Species Fig. 15B; Species Fig. 16B, with claims 1, 11, 12, 13, 18, 21, 23 and 25 readable on elected Species Fig. 16B; and Species Fig. 19C, with claims 1, 11, 12, 13, 18, 21, 23, 25 and 31 readable on elected Species Fig. 19C, with traverse.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. See MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall

relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. See MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

Applicants assert that claims 1-33 share common subject matter and, therefore, *a priori* unity of invention exists between all the claims. Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known. See ISPE 10.07 and 10.08.


Page 3 of the Office Action states that U.S. Patent No. 5,256,466 to Berrigan et al. (hereinafter "Berrigan") discloses an absorbent article having multiple layers in different arrangements. However, the Office Action does not establish that each and every element of the subject matter that is common to claims 1-33 is known in the prior art. For example, the present application relates to absorbent products such as paper diapers, sanitary napkins and

incontinence products using an absorber. The articles of Berringan relate to a manufacturing environment. Thus, the present invention is completely different from the articles of Berringan with respect to field of invention.

Furthermore, the absorbent article of independent claim 1 includes a leak preventer having a sheet, and two bags provided separately on the right and left of an upper side of the sheet. Each of the two bags has an opening facing with each other. Berringan's article 20 of Fig. 20 does not have two bags provided separately. Therefore, the absorbent article of independent claim 1 is different in construction from the article 20 of Berringan's Fig. 2. Thus, Applicants respectfully submit that lack of unity of invention has not been established, and thus an election requirement based on a lack of unity of invention is improper.

Thus, withdrawal of the Election of Species Requirement is respectfully requested.

Respectfully submitted,



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Attachment:  
Petition for Extension of Time

Date: May 8, 2008

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